IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12217 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HYDERKHAN SARDARKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12217 of 2001

MR BC DAVE for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 21.10.2001 passed by the Commissioner of Police, Baroda City in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the

said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a dangerous person. The detaining authority has considered one registered offence against the detenu under Section 384, 506(1)(2), 114 of IPC. The detaining authority has also considered statements of three anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public order.

3. Learned Advocate for the petitioner Mr. Dave restricted his arguments to the fact that there is nothing to indicate that there was disturbance to public order when the registered offence was committed. So far as statements are concerned, he submitted that there is no material to indicate that the power was properly exercised by the detaining authority under Section 9(2) of the PASA Act after undertaking due enquiry and verification regarding genuineness of the fear expressed by the witnesses and the need for use of power under Section 9(2) of the PASA Act, in comparison to the right of the detenu envisaged under Art. 22 of the Constitution of India. He has placed reliance on the decision of this Court in Bai Amina Vs. State of Gujarat, reported in 22 GLR 1186 and subsequent judgements wherein the said decision has been followed.

4. Learned Assistant Government Pleader Mr. S.S.Patel has opposed to this petition.

5. Having regard to the contentions raised, at the out-set it would be noted that there is no material to indicate that the detaining authority has undertaken proper exercise of verification of the fear expressed by the anonymous witnesses qua the detenu and its genuineness. There is nothing to indicate that any exercise except calling the witnesses was undertaken by the authority. As observed by this Court in Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat, reported in 1981 GLR 1186, the authority is expected to consider the general background, character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the informant must be enquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant, inter alie, to protect himself against the falsity of his version being exposed

by an effective explanation of the detenu or to hide his own involvement or to conceal his enmity with the detenu. In this regard, decisions in the case of Kajalben G. Sindhi Vs. Commissioner of Police, Ahmedabad, reported in 2000 (2) GLR 1296 and Israil @ Israr Pahelvan Nazirahmed Shaikh Vs. State of Gujarat - 2001 (1) GLR 306 can be profitably be employed.

5.1 In order to meet with this requirement, the detaining authority would be required to undertake a further exercise in addition to examining the anonymous witnesses. There is nothing to indicate that such an exercise is undertaken. A witness who has stated something before the sponsoring authority is bound to stick to his version before the detaining authority when he is summoned for verification, but what is stated by him is correct and genuine or not can be tested only after his version is cross-checked through other sources by undertaking further exercise. That having not been done, the subjective satisfaction cannot be said to have been recorded on the basis of any material and therefore, there is improper exercise of power under Section 9(2) of the PASA Act. The petition therefore deserves to be allowed.

6A. The registered case do not indicate any disturbance to public order.

7. The petition is therefore, allowed. Order of detention dated 21.10.2001 passed by the Commissioner of Police, Baroda City is quashed and set aside. Detenu Hyderkhan Sardarkhan Pathan be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)
*/Mohandas